

REMEDIAL ACTION REPORT

LOVE CANAL SITE LOVE CANAL AREA REVITALIZATION AGENCY PROPERTY ACQUISITION GRANT NIAGARA COUNTY NIAGARA FALLS, NEW YORK

INTRODUCTION

Site Location

The Love Canal Landfill site (Site) is located in the City of Niagara Falls, Niagara County, New York. The various neighborhoods which surround the Site are identified as the Emergency Declaration Area, of which there are seven zones.

Site Description

From 1942-53, the Site had been used by Hooker Chemicals and Plastics (now Occidental Chemical Corporation (OCC)) for the disposal of over 21,000 tons of various chemical wastes, including dioxins. Subsequently, the area near the covered landfill was extensively developed, including the construction of an elementary school and numerous homes. In the 1970's, during periods of extensive precipitation the water table rose, bringing contaminated groundwater to the surface and with it increasing number of complaints from area residents regarding odors and residues throughout the neighborhood. Dioxin and other contaminants migrated from the Site to the sewers, which had outfalls into nearby creeks, and to the Niagara River.

As a result, two presidential environmental emergencies were declared (1979 and 1980) and approximately 950 families were evacuated from a 10-square-block area surrounding the Site. In 1980, the neighborhoods adjacent to the Site were identified as the Emergency Declaration Area (EDA), which is approximately 350 acres and is divided into 7 separate areas of concern. The Site is 1/4 mile north of the Niagara River.

The fenced 70-acre Site, encompassing the original 16-acre hazardous waste landfill, is currently covered with a 40-acre clay/synthetic liner cap. A barrier drain and leachate collection and treatment system is in place and operating.

In March 1985, EPA issued a Record of Decision (ROD) to remediate the sewers and the creeks in the Site area. The remedy included 1) hydraulically cleaning the sewers; 2) removal and disposal of the contaminated sediments; 3) inspecting the sewers for

defects that could permit contaminants to migrate; 4) limiting access, dredging, and hydraulically cleaning the Black Creek culverts; and, 5) removing and storing Black and Bergholtz creeks' contaminated sediments.

In 1988, EPA issued the Love Canal EDA Habitability Study (LCHS), a comprehensive sampling study of the EDA to evaluate risks posed by the Site. Subsequent to the issuance of the final report of the LCHS, the New York State (NYS) Department of Health issued a Decision on Habitability, based on the LCHS findings. This Habitability Decision concluded the following: 1) that Areas 1, 2 and 3 of the EDA are not suitable for habitation without remediation but may be used for commercial and/or industrial purposes and 2) that Areas 4, 5, 6 and 7 of the EDA may be used for residential purposes, i.e., rehabilitation.

In 1989, OCC, the United States and NYS entered into a partial consent decree (PCD) to address some of the required remedial actions, required under a 1987 ROD, i.e., the processing, bagging, and storage of the creeks' sediments, as well as other Love Canal wastes, and the ultimate disposal of these wastes. At the present time, the sewer and creek sediments are being stored at OCC's Niagara Falls facility. OCC has developed a proposal to address the final treatment and disposal for all stored Love Canal hazardous waste materials. A proposed modification of the PCD and an Explanation of Significant Difference will address any changes from the original PCD and 1987 ROD for the final disposition of these Love Canal waste materials.

In December 1995, a consent decree, i.e., cost recovery settlement between the United States and OCC, was lodged with the United States District Court. OCC agreed to reimburse the federal government's past response costs of \$129 million.

The Love Canal Area Revitalization Agency (LCARA) was created on June 17, 1980 with a statutory purpose and directive to stabilize and to revitalize the EDA, surrounding the Site; certain portions of the EDA are also contained within the Town of Wheatfield. LCARA was provided with \$20 million in loans and grants from NYS and the federal governments, including \$15 million from the Federal Emergency Management Agency (FEMA). The federal/state agreement for the \$15 million loan and grant required that these monies be spent on the relocation of existing homeowners residing in the EDA., i.e., only for the acquisition of owner-occupied, single family residences that were owned by and were the primary residences of families or individuals as of May 5, 1980. These funds were not permitted to be used for the maintenance of properties, the acquisition of non-residential properties, moving expenses, construction of new homes, or any activities related to the revitalization or repopulation of the EDA. The remaining \$5 million was used primarily for security, insurance, protective maintenance and the purchase of additional owner-occupied residences.

Under Section 312 of the Superfund Amendments and Reauthorization Act (SARA) of 1986, the federal government provided an additional \$2.5 million to the State of New

York or its agency, LCARA, to continue the acquisition of private property in the EDA. Specifically, Section 312 authorized the acquisition of properties other than owner-occupied, single-family residences. This funding was intended to complete the overall buyout process for the entire EDA.

Pursuant to Section 312, a property acquisition cooperative agreement (PACA) was entered into between EPA and LCARA. The PACA provided funding to LCARA for the acquisition of private property within the EDA and provided certain assurances to EPA, regarding these properties. For this purchasing program, LCARA could only offer the existing property owners the fair market value of their property prior to the emergency declaration, i.e., October 1, 1980.

The PACA was funded as a remedial action; the intent was to continue the voluntary buyout of the remaining private property in the EDA. Upon acquisition, LCARA maintained the properties via a second EPA maintenance and technical assistance (MATA) grant, while revitalizing the habitable portion of the EDA. EPA has not been involved in LCARA's rehabilitation efforts or sale of properties.

The original properties acquired under the PACA included:

- 25 single family homes, non-owner occupied
- 6 commercial properties
- 2 churches and associated parsonages
- 1 fire hall
- 56 vacant parcels

Once the above properties were purchased, remaining funds were used to acquire single family homes, which were eligible for buyout under the initial buyout program but for which funds were not available. Fifteen additional properties were acquired on this basis.

As stated above, the Love Canal Habitability Decision, issued in 1988, divided the EDA into habitable and non-habitable areas. From that point on, the PACA focused on private properties which were located in the non-habitable areas.

This remedial action report addresses the acquisition of properties by LCARA, pursuant to the PACA.

CHRONOLOGY OF EVENTS

- June 1980 LCARA created through NYS statute
- October 1986 Passage of Superfund legislation specifying an appropriation of \$2.5 million for Love Canal EDA property acquisition
- June 1987 LCARA receives EPA grant; project/budget period begins
- September 1987 LCARA begins property acquisition activities
- December 1988 End of original budget period
- March 1989 LCARA ceased acquisition of properties in habitable areas
- May 1989 Budget period extension
- December 1992-93 Eleven more properties acquired in non-habitable area
- December 1993 End of budget period; last contracts closed

PERFORMANCE STANDARDS AND CONSTRUCTION QUALITY CONTROL

LCARA has implemented the PACA, as outlined in Parts (a-c) of Section 312 of SARA, to its fullest extent. Properties were purchased within the constraints of the LCARA's purchase procedures, as well as the existing property owners' priorities. Homeowners in the identified areas of the EDA were given more than ample time and opportunity for selling their properties to LCARA. LCARA's efforts in purchasing properties were conducted under the guidelines identified in EPA's PACA, Section 312 of SARA and NYS regulations. LCARA has purchased approximately 105 private properties in the EDA during the implementation of the PACA.

Lessons Learned

All homeowners who were eligible under the PACA for property buyout did not take advantage of LCARA's offer. Even though some of these homeowners lived in the non-habitable portion of the EDA, they would not accept LCARA's offer to be bought out or to be transferred into the habitable areas; these homeowners, as well as some renters, decided to maintain their current residences in the non-habitable areas.

One reason for this reluctance in selling to LCARA was that LCARA was only authorized to offer the property owner the 1980-appraised value of the property; most potential sellers wanted a higher value before they would consider any relocation. This also related directly to the homeowner not being able to afford to purchase homes in other more expensive areas around Niagara Falls. In an effort to be as accommodating as possible, LCARA extended the PACA well beyond its original intended limits in order to secure the best arrangements for all homeowners in both the habitable and non-habitable portions of the EDA.

DESCRIPTION OF THE BUYOUT PROCESS [Replaces Construction Activities]

Initially, the Assessors for the City of Niagara Falls and the Town of Wheatfield examined assessment maps, tax rolls, etc., for the purpose of determining all names and addresses of property owners eligible for buyout under the PACA. Each eligible property owner was advised of his eligibility for the buyout program.

Pursuant to SARA, arrangements were made with the NYS Department of Transportation to appraise properties not previously appraised under the previous (FEMA) buyout program. Contracts between the property owner and LCARA were prepared. Appraisals and contracts were signed by the property owner and LCARA's Chairman and were subsequently forwarded to the NYS Controller's Office for approval, as required under NYS Law.

After contract approval, property owners were advised to secure the deed, survey, abstract of title, and tax bills covering the subject property. At that point, LCARA prepared the closing documents, including Certificate of Title from an authorized Title Insurance Company, preparatory to obtaining a fee title insurance policy, City and County tax searches, City sidewalk letter regarding sidewalk assessments and City water letter regarding unpaid water bills.

Once the closing date was set, additional papers, such as pay-off letter for mortgage, pay-off letter for paving assessments, judgments or any other liens that were outstanding against the property, were ordered. After receipt, a closing statement, including tax adjustments and pay-offs of any outstanding liens, was prepared for the designated closing date and a normal real estate closing date.

All outstanding liens on the property were cleared prior to purchase, with the exception of public utilities, driveway easements, riparian rights, and other encroachments which did not effect the marketability of the property.

After closing, a small escrow was held; the property owner was given two weeks to remove personal property from the house before it was secured by LCARA.

In accordance with grant conditions attached to the PACA, a rider was attached to each deed indicating that EPA was entitled to receive a return on the sale of the property, less LCARA's associated expenses. Upon recording of the deeds to LCARA for property acquired with funds received pursuant to the PACA, LCARA assured EPA that its interest, as reflected in requirements of 40 CFR Section 30.535, was protected under the recording statutes.

In the event that any of the properties purchased, pursuant to the PACA, are sold, LCARA will provide EPA, via developed procedures, with an accounting of the purchase price received for the property and LCARA's expenses incurred during the sale activities.

FINAL INSPECTION [Not Applicable]

CERTIFICATION THAT REMEDY IS OPERATIONAL AND FUNCTIONAL [See Performance Standards section]

OPERATION AND MAINTENANCE

Although not pertinent to the PACA, SARA also required that EPA provide for the maintenance of properties in the EDA and provide LCARA technical assistance for the revitalization of the EDA. This was accomplished through a separate EPA maintenance and technical assistance cooperative agreement.

SUMMARY OF PROJECT COSTS

Under the first budget period from June 1987 until December 1988, LCARA received \$2,063,703, including administrative and closing costs. During the period from December 1992 until December 1993, LCARA expended \$275,598, including administrative and closing costs.

The approximate total funds, including LCARA's administrative and closing costs, received by LCARA for the PACA is \$2,339,301. This identifies that there are funds remaining from the original \$2.5 million; however, until the final Financial Status Report is submitted for the PACA and the final accounting is performed by EPA, the above accounting represents the best estimate of LCARA's obligations under the PACA.